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MAY 3 1949
CHARLES ELMORE CROPL
CLER

In the Supreme Court of the United States

OCTOBER TERM 1948.

No. 649.

LONGYEAR HOLDING COMPANY, a Corporation, HELEN H. BENNETT, C. M. HILL LUMBER COMPANY, a Corporation, THE ADAMS CORPORATION, a Corporation, HAROLD W. McCORMACK, JOHN ANDREW PETERSON, FANNIE E. DANIELS, ANNIE E. DANIELS, MINNIE DANIELS MANN, JENNIE D. CAMP, ANN R. HESS, WILLIAM R. DANIELS, LANCAS IRON COMPANY, a Corporation, THE NORTH STAR IRON COMPANY OF WEST VIRGINIA, a Corporation, SAGINAW LAND COMPANY, a Corporation, HELEN EMERSON JAMISON, FRANCES SELLWOOD LUSTER, R. M. SELLWOOD, JR., and JOSEPH GERALD SELLWOOD,

Appellants,

vs.

STATE OF MINNESOTA,

Appellee.

APPEAL FROM
THE SUPREME COURT OF THE STATE OF MINNESOTA.

PETITION FOR REHEARING.

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STATE OF MINNESOTA,

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APPEAL FROM
THE SUPREME COURT OF THE STATE OF MINNESOTA.

PETITION FOR REHEARING.

To *The Honorable Fred M. Vinson,*
Chief Justice of the United States,
and the Associate Justices of the
Supreme Court of the United States:

Come now the above named petitioners (sometimes hereinafter called "appellants") and present their petition for a rehearing in this case on the following grounds:

I.

There is drawn in question herein the validity of State statutes under the Constitution of the United States and the decision of the Supreme Court of Minnesota was in

favor of their validity. The case, thus involving substantial Federal questions, comes precisely within the provisions of Title 28, United States Code, Section 1257, governing appeals to this Court.

II.

This case is of tremendous public importance. The basic question involved is the right of a State to appropriate private property through acts of its legislature without compensation to the owners of that property. The provisions of the United States Constitution here invoked were specifically calculated and adopted to prevent such action. They constitute the only protection the citizens of this Country have against such action. Under our existing governmental organization, the enforcement of such provisions rests primarily upon this Court. The citizens of this Country must look to this Court for such protection. This is exactly the sort of case which historically has been the subject of this Court's jurisdiction. It is a case which cannot be by-passed by this Court without substantially weakening the effectiveness of such vitally important constitutional limitations and public confidence in our form of government and our written Constitution.

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ARGUMENT.

In asking the Court to reconsider its order of April 18, 1949, dismissing the within appeal for want of jurisdiction, we shall not presume to reargue the existence of the substantial Federal Constitutional questions here involved. We believe that the presence of such questions in this litigation and on this appeal is established beyond peradventure in the Statement as to Jurisdiction and in the appellants' brief in opposition to the appellee's motion to dismiss this appeal to which the Court has already devoted its attention. As we see it, the issue now, to borrow a phrase from Burke's Conciliation speech, "is not what a lawyer tells you you *may* do; but what humanity, reason and justice, tell you you *ought* to do." With this in mind, we submit that the decision of the Supreme Court of Minnesota here appealed from, giving, as it does, legal efficacy to Minnesota Statutes, which presume to appropriate without compensation many millions of dollars worth of "iron ores and other minerals" lying beneath lakes and rivers in the State of Minnesota and owned by private citizens of that State, and which impair the obligations of private contracts, amply justifies this final appeal to the conscience of this Court. In thus appealing,—

> We are not unmindful that any case which reaches the threshold of this Court readily assumes in the minds of counsel for the appellant, sometimes justifiably but oftentimes without justification, the proportions of a *cause celebre*;
>
> We are not unmindful that the orders of many new Federal administrative agencies promulgated during the last decade and the enactment of a great body of Federal legislation during and since the Second World War, reaching matters which had theretofore been thought to be the subject of local law, have imposed upon this Court unprecedented burdens; and

We are not unmindful that during the present term of this Court more than seven hundred cases* have been docketed therein, and that of the five hundred and ninety-four cases so docketed, which had been passed upon by this Court through April 18, 1949, one hundred and ninety** cases have been accepted by this Court for disposition on their merits.

On the other hand, this Court since the genesis of the Nation has been unequivocally committed to the proposition that "there is no more important provision in the Federal Constitution than the one which prohibits States from passing laws impairing the obligation of contracts (*a fortiori* laws appropriating private property without compensation) and *it is one of the highest duties of this Court to take care the prohibition shall neither be evaded nor frittered away.*" *Murray v. Charleston*, 96 U. S. 432, 448.†

Although devotion to that duty may sometimes entail difficulties, such difficulties may never be allowed to impeach the obligations which the Constitution itself and this Court's own mandates have imposed upon the Court.

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* Statistics used herein have been compiled from Commerce Clearing House Supreme Court Service.

** Of such 190 cases, 56 appear to have involved substantial constitutional questions, of which 38 involved civil rights arising in criminal cases or otherwise, 7 involved questions of State taxation, 5 involved questions of administrative law, 3 involved labor relations questions, 2 involved matters of Federal procedure, and 1 involved the faith to be accorded a State decree in a divorce case. Not one appeared to involve enforcement of the basic constitutional injunctions for the protection of private property which are at issue in this case,—except possibly in a collateral way in certain of the State tax cases. It would thus appear that this Court has recently been most zealous in its consideration of cases for the protection of civil and personal rights. Query: Is it not equally in the public interest that its equally important obligation to protect basic rights of private property shall not be left entirely to State and lower courts?

† Emphasis supplied.

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Thus, in the *Dartmouth College* case, 17 U. S. 518, 572, Mr. Justice Story, in his concurring opinion, said:

> "In pronouncing this judgment, it has not for one moment escaped me how delicate, difficult, and ungracious is the task devolved upon us. The predicament in which this Court stands in relation to the nation at large, is full of perplexities and embarrassments. It is called to decide on causes between citizens of different States, between a State and its citizens, and between different States. It stands, therefore, in the midst of jealousies and rivalries of conflicting parties, with the most momentous interests confided to its care. Under such circumstances, it never can have a motive to do more than its duty; and, I trust, it will always be found to possess firmness enough to do that."

The grave constitutional questions involved in the instant case clearly invoke that duty and eloquently command the firmness to discharge it. Were this not so, the way would be left open to a State, accountable to no one and to no restraint save its own fiat, to evade the supreme ordinances of the Nation and to fritter away the rights and liberties of individual citizens which those ordinances are designed to secure. That this must not happen has been repeatedly stated by this Court, in times of general public confidence in our basic institutions and private property rights. Our present times are affected by foreign ideologies which seem to invite trespass upon property rights not only by administrative bodies imbued with a desire to regulate but also by legislatures in quest of revenues they can disburse. These are times which call more loudly and urgently than ever before not only for actual protection, but also for public confidence in the effective protection, of private property rights upon which our American institutions and the economic stability of this country depend.

In these times, and in a situation such as the case at bar where State laws which in form and substance appropriate private property to the State itself have been approved by a State Court, it is especially and peculiarly

important that this Court accept and exercise its often recognized responsibility for these "momentous interests confided to its care." Neither the important rights of the appellants nor public confidence in our existing institutions (which has already been impaired by constant attacks from both the right and the left), can be fairly met without a full consideration of the vital issues in this case. In the pattern of our political institutions where the power of the State is limited by a written Constitution, this Court alone, as the final arbiter of constitutional principles, stands between the individual citizen and the overzealous legislature.

WHEREFORE, petitioners pray that this Court grant a rehearing in this case and that an order be entered vacating and setting aside the order to dismiss entered by this Court on April 18, 1949, and noting probable jurisdiction herein.

Respectfully submitted,

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Counsel for Appellants.

Certificate.

I, John B. Putnam, one of the counsel for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of this case is presented in good faith and not for delay.

JOHN B. PUTNAM.